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April 9, 1999

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
TW-B204
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *Ex Parte* Presentation
File Nos. 47-SAT-WAIV-97; 548-SSA-97(50); 1281-DSE-P/L-96
(Call Sign E960327); ITC-95-341; IB Docket No. 96-111, CC Docket
No. 93-23, RM-7931; CC Docket No. 87-75; IB Docket No. 95-41; 730-
DSE-P/L-98; 647-DSE-P/L-98; 1217-SSA-98

Dear Ms. Salas:

On Thursday, April 8, 1999, Lon Levin, Vice President and Regulatory Counsel of AMSC, and Bruce Jacobs, AMSC's outside regulatory counsel, met with Ari Fitzgerald, Legal Advisor to the Chairman; Linda Haller, Senior Legal Advisor to the International Bureau Chief; and Thomas Tycz, Chief of the Satellite and Radiocommunication Division, International Bureau. The purpose of these meetings was to discuss the Commission's policies in connection with the licensing of MSS systems in the L-band.

Specifically, we discussed the issue of whether consumers might benefit from the introduction of the additional competition that would be provided by the operation of additional MSS system in the L-band. In that regard, AMSC made the following points:

- This case is about spectrum access, not competition. Spectrum is the lifeblood of AMSC's system. It built a \$650 million satellite system that is being used to meet customers needs. The system, in only its third year of operation, is growing and needs access to 10 MHz so that it can continue to grow as planned.
- It is unprecedented for the Commission to take core spectrum away from a licensee that has built and is operating its facilities in accordance with its

authorization, for the purpose of promoting competition or for any other reason.

- The traditional way for the Commission to promote competition in a service is to allocate additional spectrum for that service and grant new licenses -- not take away spectrum from the incumbent licensee. Since making the decision to license a single satellite system in the L-band, the Commission has licensed rural cellular systems, permitted Qualcomm to operate its Omnitrac system in the Ku-band, allocated spectrum for and licensed the Big LEOs and the Little LEOs, and allocated spectrum for and begun processing MSS applications at 2 GHz. AMSC did not oppose these actions (indeed, it was a proponent of the Big LEO and 2 GHz MSS allocations) and it does not oppose competition. AMSC only opposes applications that would reduce its access to its licensed spectrum.
- A generalized belief in increasing competition (though worthy) is not sufficient to overcome the repeated Commission decisions that there is only sufficient spectrum for it to license one system in the L-band, unanimous decisions which explicitly and implicitly have judged a single licensee's improved access to spectrum to be more critical to the public interest than any marginal increase in competition that would result from licensing additional systems to share the band. Those decisions extend from the 1987 *MSS Licensing Order*, to the *Lower L-band NPRM* in 1996, to *DISCO II* in 1997 when the Commission applied Section 25.119(c)(19) to earth station applications from foreign-licensed systems. In the absence of a compelling reason to abandon them, those decisions should be respected.
- AMSC is a common carrier, subject to a requirement that it make its space segment available to resellers that compete with AMSC as an end-user service provider. AMSC has proven that this approach works, since there are several such resellers. There are established procedures for customers to file complaints, but no such complaints are on file. AMSC's space segment is capable of being used to provide any service that any of the pending applications propose to provide.

We also discussed the potential for a Canadian trade complaint being filed on the grounds that the dismissal of the pending applications is a violation of the U.S. obligations under the Basic Telecom Agreement. In that regard, AMSC made the following points:

- The Basic Telecom Agreement leaves intact the Commission's spectrum management authority; it requires only that the Commission treat foreign-owned entities the same as U.S.-owned entities.
- The Commission's decision to license a single system in the band was made at a

time when it was not even considering the possibility of licensing foreign-owned systems.

- When the Commission reiterated its spectrum management policy in 1996 in the *Lower L-band NPRM*, it did so in response to U.S. entities, principally Big LEOs Iridium and Globalstar, that wanted access to the bands, thus providing additional evidence that the Commission has been motivated by simple spectrum management goals and not by any interest in restricting foreign ownership of the licensee.
- The Commission policy proposed in the *Lower L-band NPRM* would permit foreign-licensed entities to apply to provide service in the U.S. if and when the Commission has successfully coordinated AMSC's access to its licensed spectrum.
- The Commission permits foreign ownership of the single system that it has decided to license.
- The Commission established procedures that permit TMI and other foreign-licensed entities to participate in the 2 GHz MSS proceeding.

TMI claims that its operation in the United States would not harm AMSC's access to spectrum. This claim must be rejected. The current coordination effort is fragile and it has not yet been successful in providing the U.S. licensee with long-term stable access to the 10 MHz that has been the Commission's goal. If TMI is permitted to provide service in the United States before it enters into that kind of agreement, the negotiations will only become more difficult and will never reach the Commission's goal. There is no "Canadian spectrum" with which TMI can provide service over the long term. Rather, TMI currently has access to spectrum only until the end of the year and only ostensibly to provide service in Canada. Beyond 1999, until there is a stable coordination arrangement, access to spectrum by TMI and AMSC will need to be renegotiated every year among the five or more parties to the North American MSS coordination. Please do not be fooled by TMI's claims that there is a "free lunch," that its use of L-band spectrum to provide U.S. service will have no impact on AMSC's access to spectrum. The North American coordination is largely a zero-sum game; spectrum that TMI will use to serve the U.S. market will have to come at least in part from spectrum that AMSC otherwise would access.

Ms. Magalie Roman Salas

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Two copies of this notice for each of the above-captioned proceedings are being submitted to the Secretary of the FCC in accordance with the Commission's Rules. Please direct any questions regarding this matter to the undersigned.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lon C. Levin" with a stylized flourish at the end.

Lon C. Levin

cc: Daniel Connors
Jennifer Gilsenan
Karen Gulick
Linda Haller
Ari Fitzgerald
Fern Jarmulnek
Paul Misener
Susan Steiman
Peter Tenhula
Cassandra Thomas
Thomas Tycz

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